Tenaga Nasional Bhd v Empayar Canggih Sdn Bhd (previously known as ODVD Manufacturer Sdn Bhd)

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO 22NCVC-153 OF 2011
LEE HENG CHEONG JC
20 MAY 2013

Public Utilities — Electricity — Charges for electricity — Claim for losses resulting from meter tampering — Whether premises owner liable to Tenaga Nasional Bhd ('TNB') for loss of revenue suffered — Whether fact that premises was rented out to tenants is defence — Whether TNB must first prove that premises owner has committed an offence under s 37(1), (3) or (14) of the Electricity Supply Act 1990 — Whether TNB's claim limited to three months — Electricity Supply Act 1990 s 38(3) — Licensee Supply Regulations reg 11

The plaintiff entered into a power supply agreement ('the said agreement') with the defendant to supply electricity to the defendant's premises ('the premises'). The defendant's application for electrical supply to the premises was made prior to the oral tenancy agreement with Kemboja Jaguh Sdn Bhd ('Kemboja'). The plaintiff commenced this action claiming that the plaintiff's meter at the premises had been tampered with and that the tampering resulted in the plaintiff suffering loss of revenue. The defendant denied that the meter was tampered and that in any event, the defendant had no knowledge of the tampering as the premises had been rented out to another company at the material time. The issue arising was whether the defendant was liable to the plaintiff for the loss of revenue suffered due to the alleged meter tampering pursuant to s 38(3) of the Electricity Supply Act 1990 ('the Act').

Held, allowing the plaintiff's claim with costs:

(1) The plaintiff's meter at the defendant's premise had been tampered with and that the said tampered meter was unable to record the exact amount of electricity supplied to the defendant thus resulting in the monthly electricity bills issued by the plaintiff, not recording the actual electricity consumed by the defendant. The tampering of the meter had caused a discrepancy resulting in the said meter only being able to read 36.77% of the actual electricity supplied to the premises (see para 10).

(2) The defendant had not challenged the plaintiff's right to claim for the loss of revenue suffered by it under s 38(3) to (5) of the Act (see para 15).

(3) The defendant's contention that pursuant to reg 11 of the Licensee Supply Regulations, the plaintiff's claim was limited to 'three months

from the date the defendant was informed about being undercharged' was a non-starter as the same was never put to the plaintiff's witnesses. The defendant's failure to put this contention to the plaintiff's witnesses, amounted to an abandonment of the same. Thus the defendant was estopped from relying on the same (see para 19).

(4) The plaintiff's claim was for loss of revenue under s 38(3) of the Act, pursuant to ss 37(1), 37(3) and 37(14) of the Act and meter tampering is specifically referred to in s 37(1) of the Act whereas reg 11(2) makes no reference to meter tampering at all (see para 21).

(5) The defendant's contention, that at the material time, the premise was rented out to Kemboja was without merits, as the supply of electricity to the premises was based on the agreement between the plaintiff and the defendant. Further the plaintiff's system still showed the defendant as the registered consumer and the monthly electricity bills for the premises were still issued in the defendant's name. The premise was owned by the defendant and as such the defendant was duly liable. Further, the evidence showed that the defendant and Kemboja were, for all intent and purposes, one and the same (see para 25).

(6) The plaintiff was not required to prove that the defendant had committed an offence under s 37(1), (3) or (14) of the Act before the plaintiff was entitled to claim from the defendant for loss of revenue incurred under s 38(3) of the Act as a result of the alleged meter tampering (see paras 31–32).

(7) The defendant owed a duty of care to the plaintiff as the account holder/registered consumer of the plaintiff and landlord of the premises to check the meter regularly and to detect any possible tampering by the actual consumer, failing which the defendant shall be liable for any tampering arising (see para 35).

[Bahasa Malaysia summary

Plaintif menandatangani perjanjian bekalan kuasa ('perjanjian') dengan defendan untuk membekalkan elektrik ke premis defendan ('premis'). Permohonan defendan untuk bekalan elektrik kepada premis itu telah dibuat sebelum perjanjian penyewaan lisan dengan Kemboja Jaguh Sdn Bhd ('Kemboja'). Plaintif memulakan tindakan ini mendakwa bahawa meter plaintif di premis telah diusik dan telah menyebabkan plaintif mengalami kerugian hasil. Defendan menafikan bahawa meter telah diusik dan dalam sebarang keadaan, defendan tidak mempunyai pengetahuan akan gangguan tersebut memandangkan premis itu telah disewakan kepada syarikat lain pada masa material. Isu yang timbul ialah sama ada defendan adalah bertanggungjawab kepada plaintif untuk kehilangan hasil yang dialami kerana

usikan meter yang dikatakan menurut s 38(3) Akta Bekalan Elektrik 1990 ('Akta'). A

Diputuskan, membenarkan tuntutan plaintif dengan kos:

(1) Meter plaintif di premis defendan telah diusik dan bahawa meter tersebut tidak dapat merekodkan jumlah sebenar tenaga elektrik yang dibekalkan kepada defendan sehingga mengakibatkan bil elektrik bulanan yang dikeluarkan oleh plaintif, tidak mencatat tenaga elektrik sebenar digunakan oleh defendan. Usikan terhadap meter telah menyebabkan percanggahan menyebabkan meter tersebut hanya dapat membaca 36.77% daripada tenaga elektrik sebenar yang dibekalkan kepada premis (lihat perenggan 10). B C

(2) Defendan tidak mencabar hak plaintif untuk menuntut kehilangan hasil yang dialaminya di bawah s 38(3) hingga (5) Akta (lihat perenggan 15). D

(3) Hujahan defendan bahawa menurut peraturan 11 Licensee Supply Regulations, tuntutan plaintif adalah terhad kepada 'tiga bulan dari tarikh defendan telah dimaklumkan tentang caj kurang' tidak berjaya kerana perkara yang sama tidak pernah dikemukakan kepada saksi plaintif. Kegagalan defendan untuk mengemukakan hujahan tersebut kepada saksi plaintif, bersamaaan dengan peninggalan yang sama. Oleh itu defendan telah diestop daripada bergantung pada yang sama (lihat perenggan 19). E

(4) Tuntutan plaintif adalah untuk kehilangan hasil di bawah s 38(3) Akta, menurut ss 37(1), 37(3) dan 37(14) Akta serta usikan meter secara khusus disebut di dalam s 37(1) Akta manakala peraturan 11(2) tidak merujuk kepada usikan meter sama sekali (lihat perenggan 21). F

(5) Hujahan defendan, bahawa pada masa material, premis itu disewakan kepada Kemboja adalah tiada merit, kerana bekalan elektrik ke premis adalah berdasarkan kepada perjanjian antara plaintif dan defendan. Tambahan lagi sistem plaintif masih menunjukkan defendan sebagai pengguna berdaftar dan bil elektrik bulanan bagi premis itu masih dikeluarkan atas nama defendan. Premis itu dimiliki oleh defendan dan oleh itu sewajarnya defendan sepatutnya bertanggungjawab. Selanjutnya, keterangan menunjukkan bahawa defendan dan Kemboja, untuk semua maksud dan tujuan, adalah satu dan sama (lihat perenggan 25). G H

(6) Plaintif tidak dikehendaki untuk membuktikan bahawa defendan telah melakukan suatu kesalahan di bawah s 37(1), (3) atau (14) Akta sebelum plaintif berhak menuntut daripada defendan untuk kehilangan hasil yang ditanggung di bawah s 38(3) Akta akibat dari usikan meter yang dikatakan itu (lihat perenggan 31–32). I

(7) Defendan mempunyai kewajipan berjaga-jaga kepada plaintif sebagai pemegang akaun/pengguna berdaftar plaintif dan tuan tanah premis untuk memeriksa meter dengan kerap dan untuk mengesan sebarang kemungkinan usikan oleh pengguna sebenar, sekiranya gagal, defendan akan bertanggungjawab atas apa-apa usikan yang timbul (lihat perenggan 35).]

Notes

For cases on charges for electricity, see 10 *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2237–2240.

Cases referred to

Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal [1995] 2 MLJ 770, CA (refd)

Chin Hong Trading & Packaging Sdn Bhd v Tenaga Nasional Bhd [2011] MLJU 979; [2011] 1 LNS 1431, HC (folld)

H L Bolton (Engineering) Co Ltd v T J Graham & Sons Ltd [1956] 3 All ER 624, CA (folld)

Marwin Industries Sdn Bhd v Tenaga Nasional Berhad (Civil Appeal No J-02 (NCVC)-3147–12 of 2011) (unreported), CA (refd)

TNB v Wong Kwi Fong (Civil Appeal No W-02–2901 of 2010) (unreported), CA (folld)

Taiwan Chief Precision Technology Sdn Bhd (formely known as Li Yo Electronics Sdn Bhd) v Tenaga Nasional Bhd [2013] 4 MLJ 625, CA (folld)

Tenaga Nasional Bhd v Marwin Industries Sdn Bhd [2012] 2 MLJ 421, HC (folld)

Legislation referred to

Companies Act 1965
Electricity Supply Act 1990 ss 37, 37(1), (3), (14), 38(3), (4), (5)
Licensee Supply Regulations 1990 reg 11 11(2)

David Mathew (Hadi Mukhlis with him) (Shook Lin & Bok) for the plaintiff.
Raymond Mah Mun Kitt (Lim Yen Hwa & Chloe Lim Yen Hwa with him) (Mah Weng Kwai & Associates) for the defendant.

Lee Heng Cheong JC:

THE STATEMENT OF AGREED FACTS

[1] The plaintiff is a company incorporated in Malaysia under the Companies Act 1965, having its registered address at No 129, Jalan Bangsar,

50732 Kuala Lumpur. Further, the plaintiff is in the business of, inter alia, generating, transmitting and distributing electricity supply to various end users nationwide.

[2] The defendant was at all material times a company incorporated in Malaysia under the Companies Act 1965 having its registered address at 500–3–8, Third Floor, Wisma Indah, Jalan Tun Razak, 50400 Kuala Lumpur and/or its business address at 152–3–2 to 5, Kompleks Maluri, Jalan Maluri, 55100 Cheras, Kuala Lumpur.

[3] On or about 4 September 1998 the plaintiff entered into a power supply agreement dated 4 September 1998 ('the said agreement') with the defendant wherein the defendant had request, and the plaintiff had agreed, to provide the supply of electricity to the defendant's premises at 3103, Jalan BS 7/1, Blok F, Kawasan Perindustrian Bukit Serdang, Bukit Serdang, 43300 Seri Kembangan, Selangor Darul Ehsan ('the defendant's premises').

[4] The defendant's application for electrical supply to the premises at No 3103, Jalan BS 7/1, Blok F, Kawasan Perindustrian Bukit Serdang, Bukit Serdang, 43300 Seri Kembangan, Selangor Darul Ehsan was made prior to the oral tenancy agreement dated 1 November 2000 with Kemboja Jaguh Sdn Bhd.

THE PLAINTIFF'S AND THE DEFENDANT'S ISSUES

[5] The plaintiff's issues are as follows:

(a) whether the plaintiff's meter, located at the defendant's premises known as 3103, Jalan BS 7/1, Blok F, Kawasan Perindustrian Bukit Serdang, Bukit Serdang, 43300 Seri Kembangan, Selangor Darul Ehsan, had been tampered with and whether the alleged tampering resulted in the plaintiff suffering loss of revenue? and

(b) whether the defendant is liable to the plaintiff for the loss of revenue suffered due to the alleged meter tampering pursuant to s 38(3) of the Electricity Supply Act 1990 ('the Act')

[6] The defendant's issues are as follows:

(a) whether the plaintiffs meter, located at the defendant's premises known as 3103, Jalan BS 7/1, Blok F, Kawasan Perindustrian Bukit Serdang, Bukit Serdang, 43300 Seri Kembangan, Selangor Darul Ehsan, had been tampered with and whether the alleged tampering resulted in the plaintiff suffering loss of revenue?

(b) whether the plaintiff is required to prove that the defendant has

committed an offence under s 37(1), (3) or (14) of the Electricity Supply Act 1990 before the plaintiff is entitled to claim from the defendant for loss of revenue incurred under s 38(3) of the Electricity Supply Act 1990 as a result of the alleged meter tampering?;

(c) Whether the plaintiff is required to prove that the defendant has committed an offence under s 37(1), (3) or (14) of the Electricity Supply Act 1990 on a balance of probabilities or 'beyond reasonable doubt'?; and

(d) whether the defendant owed a duty of care to the plaintiff as the account holder and landlord of the premises to check the meter regularly and to detect any possible tampering by the actual consumer *(pelanggan sebenar)*?

THE PLAINTIFF'S CASE

[7] The plaintiff's case against the defendant is, inter alia, as follows:

(a) pursuant to the power supply agreement, the defendant became a registered consumer of the plaintiff through the account No 930260 for the defendant's premises (see exh P1). On 10 October 2005, the plaintiff conducted an inspection of its meter at the defendant's premises. During this inspection, it was discovered that the meter had been tampered. The plaintiff subsequently lodged a police report against the defendant (see exh P5);

(b) the loss of revenue suffered by the plaintiff arising from the tampering was estimated to be RM541,255.42 for the period of 18 May 2001 to 10 October 2005.

(c) that the plaintiff's meter at the defendant's premises had been tampered;

(d) that the tampering caused the plaintiff to suffer from loss of revenue as the tampered meter was unable to record the correct amount of electricity supplied to the defendant's premises; and

(e) that the defendant is liable to the plaintiff for the loss of revenue suffered by the plaintiff.

THE DEFENDANT'S CASE

[8] The defendant's case is, inter alia, as follows:

(a) That the plaintiff's claim is based on false presumptions and assumptions. The defendant contends that the plaintiff in making this claim has presumed that the defendant as the account holder is strictly

liable, regardless of whether it was actually the defendant who tampered with the electricity meter; and/or that the defendant must have tampered with the electricity meter, because it is the owner of the said premises. These presumptions of law and assumption of fact are both false;

(b) that there was no proof that the defendant tampered with the meter. The defendant contends that the plaintiff has failed to prove that the defendant has committed an offence under s 37 of the Act. The defendant further contends that it did not have motive or opportunity to tamper with the meter located securely within the said premises and in the control of the tenant of the defendant;

(c) that the plaintiff has failed to adduce any credible evidence that the defendant or any of its directors, employees or agents were responsible for tampering with the electricity meter on the said premises because the plaintiff did not take any steps whatsoever to investigate the matter; and

(d) that there was reasonable explanation for the drop in electricity consumption and that the plaintiff assumes that the alleged meter tampering occurred on or about 18 May 2001 on the basis that there was a fall in the average electricity consumption beginning from the bill dated 18 May 2001 (exh P8 at p 57 of bundle B).

CONSIDERATION OF THE PLAINTIFF'S ISSUES

The plaintiff's issue (1)

[9] Whether the plaintiff's meter, located at the defendant's premises known as 3103, Jalan BS 7/1, Blok F, Kawasan Perindustrian Bukit Serdang, Bukit Serdang, 43300 Seri Kembangan, Selangor Darul Ehsan, had been tampered with and whether the alleged tampering resulted in the plaintiff suffering loss of revenue?

[10] This particular issue of the plaintiff is similar with one of the defendant's issues. This court finds that the plaintiff's meter, located at the defendant's premises known as 3103, Jalan BS 7/1, Blok F, Kawasan Perindustrian Bukit Serdang, Bukit Serdang, 43300 Seri Kembangan, Selangor Darul Ehsan, had been tampered with and that the tampering resulted in the plaintiff suffering loss of revenue for the following reasons.

(a) the plaintiff's claim for the loss of revenue arising from meter tampering was made pursuant to s 38(3) to (5) of the Act which reads as follows:

S 38(3) *The licensee may require the consumer to pay him for the loss of revenue due to the offence committed under s 37(1), 37(3) and 37(14)* and any expenses incurred by the licensee under this s including expenses incurred in respect of the reconnection of electricity supply.

(4) *A written statement by an employee of the licensee duly certified by the licensee or any person authorized by the licensee specifying:*

(a) *the amount of loss of revenue or the expenses incurred by the licensee;* and

(b) *the person liable for the payment thereof,*

shall be *prima facie evidence* of the payment that has to be made by the consumer under subsection (3).

(5) The amount stated in the written statement shall, within the period specified in the statement, *be due and payable to the licensee and in default of payment such amount shall be recoverable by civil action in a court.* (Emphasis added.)

(b) Sections 37(1), 37(3) and 37(14) of the Act read as follows:

37(1) *Any person who tampers* with or adjusts any installation or part thereof or manufactures or imports or sells any equipment so as to cause or to be likely to cause danger to human life or limb or injury to any equipment or other property shall be guilty of an offence and for each such offence shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(3) *Any person* who in any manner dishonestly:

(a) abstracts energy;

(b) consumes energy;

(c) uses energy;

(d) *alters the index of any meter or other instrument* used on or in connection with any installation of any supply authority or any licensed installation for recording the output or consumption of energy; or

(e) prevents any such meter or instrument from duty recording the output or consumption of energy

(14) *Any person* who *damages any meter or other instrument* used on or in connection with any licensed installation for recording the output or consumption of energy shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both. (Emphasis added.)

(c) The defendant's contention is a denial that the meter was tampered and that in any event, the defendant has no knowledge of the tampering as their premises had been rented out to another private limited company at the material time;

(d) from the evidence adduced, the plaintiff discovered that its meter at the defendant's premises had been tampered during the 10 October 2005 inspection. The plaintiff adduced the foilowings in the course of trial:

(i) the plaintiff's inspection report (exh P4);

(ii) the plaintiff's tampered meter which was tampered with, by way of the tampering the 'seal penutup meter' and 'wayar arus S1 dan S2 fasa kuning telah diterbalikkan' and the said tampering had caused the meter to record a discrepancy of -63.23% of the electricity supplied to the defendant's premises.

(iii) the production of the said tampered Seal Penutup Meter (exhs P3 and P2C) as testified by PW1:

> Untuk keadaan seal yang normal, pada hujung seal yang dalam gambar ml sepatutnya ada satu line yang straight, yang cantik. Jadi dekat sini saya dapati ianya terdapat bekas yang disuik, yang ditampered pada seal tersebut.

(iv) based on, inter alia, the above, I find and accept the plaintiff's case that the plaintiff's meter at the defendant's premises was tampered and such tampering has caused the plaintiff to suffer a costs of revenue.

(e) I am guided by the following cases:

(i) *Chin Hong Trading & Packaging Sdn Bhd v Tenaga Nasional Bhd* [2011] MLJU 979; [2011] 1 LNS 1431, where the court held at pp 5–6:

> (3) *Whether the CT panel had been tampered with*, and if so whether the defendant is entitled to recover the loss of revenue of RM270,299.48?
>
> …
>
> …
>
> *The key evidence leading to the discovery of the tampering of the CT transformer is that of DW2.* On inspection of the CT panel, DW2 found that the seal bit (exh D4) was a fake. There was some foreign yellow and black wires (exh. D6) connected on the CT panel. *Photographs taken by DW1 of the CT panel shows presence of the foreign yellow and black wires connected on the CT panel (exhs D1L & M).* On closer inspection, DW2 also discovered that the foreign yellow and black wires were connected through a hole in a partition wall behind the CT panel (photograph marked exh. D1K). DW2 said that this was to enable the foreign yellow and black wires to be pulled out from the office behind the partition wall. DW2 proceeded to remove the foreign wires and placed fresh seals on the CT panel. *DW2 recorded his findings on his inspection report form and informed the plaintiffs representative of his findings.* The plaintiff's representative then signed on the form as witness to the inspection. *Later the same day, DW2 lodged a police report on the incident (exh D3).*

Both DW1 and DW2's evidence was challenged under cross-examination. DWTs evidence corroborated DW2 in material particulars. DW1's evidence was on his role as the photographer was consistent and credible. Subjected to extensive cross-examination, DW2 showed that he had the necessary training, skills and expertise to inspect meter installations. DW2 said that he was alerted to the possibility of tampering because of the abnormal readings of the red, yellow and blue phases. *DW2 also explained the effect of the tampering of the CT panel; in particular, he found that there were errors in the readings of the meter. In fact, after the foreign wires had been removed, the meter readings were normal.* DW2's evidence was consistent and unshaken during the cross-examination. The foreign yellow and black wires which were connected to the CT panel were inserted to bypass the electricity meter in order for a lower reading to be recorded. On the totality of the evidence and on a balance of probabilities, the Court is satisfied the CT panel had been tampered with. (Emphasis added.)

(ii) In *Taiwan Chief Precision Technology Sdn Bhd (formely known as Li Yo Electronics Sdn Bhd) v Tenaga Nasional Bhd* [2013] 4 MLJ 625, the court held at pp 629–630:

(1) Whether the CTT at the plaintiff's factory had been tampered with?

…

…

It is not disputed that DW2 together with DW1 and one En. Hairul Anwar bin Harun visited the plaintiffs factory premises on 2.7.2010 to conduct a routine inspection on the installation of the electricity meter. DW2 carried out the inspection and found that the blue phase P1 and P2 at the CTT had been reversed. These facts are corroborated by the photographic evidence (34 photographs marked collectively as exh D1) taken by DW1. DW2 recorded his findings on the 'Borang Pemeriksaan Meter LPC Voltan Rendah' ('the Borang'). The Borang was countersigned by one Mr. Chin Ng Cheong on behalf of the plaintiff company as a witness at the inspection. *DW2 also produced a copy of a police report (exh D3) on the incident.*

As DW1's evidence was not challenged under cross-examination, the Court accepts the photographic evidence (exh D1) depicting the plaintiff's factory premises, the CT panel, the electricity meters, the CTT and the blue phase P1 and P2 which were reversed. On the other hand, DW2 was cross-examined extensively on his qualifications and competency in carrying out inspections of the installation of meters. DW2's answers were clear and unequivocal; he explained that it was not necessary for an electrical engineer to be present. He had previously conducted routine inspections. And that he had used an equipment known as a portable wiring set (PWS) which recorded the errors in reading of the meters at the plaintiff's factory. On the whole of DW2's evidence, the Court finds that DW2 was a credible witness; he was cooperative and consistent. His evidence was uncontroverted. *On the other hand, the only evidence in rebuttal is PW1's and PW2's bare denial. In fact, PW2's testimony that he never tampered with the electricity meter is irrelevant. The defendant did not allege PW2 of*

tampering with the CTT. Further, PW2 was only an electrical contractor who carried out some electrical works for the plaintiff from time to time. *The CTT could have been tampered by any other third party.*

On the totality of the evidence, the Court is satisfied that the defendant has proven on a balance of probabilities that the CTT at the plaintiff's factory had been tampered with. Accordingly, the question is answered in favour of the defendant. In the light of this finding, the Court will now address the question relating to whether the defendant is entitled to recover the loss of revenue of RM294,297.89. (Emphasis added.)

(iii) In *Tenaga Nasional Bhd v Marwin Industries Sdn Bhd* [2012] 2 MLJ 421, the court held at pp 425–426:

Whether the plaintiff's test terminal block at the defendant's factory has been tampered with?

…

…

[7] *PW2 visited the defendant's factory on 3 September 2009 and conducted a routine inspection on the installation of the meter. PW2 found evidence of tampering of the meter.* The seal bits at the meter cage and meter panel were counterfeits (exhs P1(M), P1(N) and P4). The seal bits at the TTB were missing (exh P1(G)). A foreign blue wire tied with a yellow wire had been used as a bypass at the TTB (exhs P1(F) and P6). PW2 also found that the foreign blue wire was tied to a window next to the meter panel (exhs P1(U) and P1(V)). PW2 removed the foreign wire at the TTB and reseated the installation of the meter and the meter cage. *PW2 then recorded her findings in the 'Borang Pemeriksaan Meter LPC Voltan Rendah' (exh P2)*. The defendant's representative DW2 who was present also signed on the said Borang as witness to PW2's findings. Despite extensive cross-examination by defence counsel, PW2's evidence was consistent and unshaken. *PW2 came across as a credible witness. PW2's evidence was also corroborated by PW1 who was present and who took photographs of the evidence.*

[8] On the totality of the evidence, the court finds that the plaintiff has satisfied the burden of proof of establishing its case and introducing evidence. There was clear and incontrovertible evidence that the meter had been tampered with. Accordingly, the burden of proof shifted to the defendant. The only evidence in rebuttal is that of the defendan's factory manager ('DW2'). DW2 said that he did not know if the meter had been tampered with. He denied tampering with the meter. He also said that he was not present during the inspection, he did not see the foreign blue wire, and that he signed the said Borang because PW2 asked him to.

[9] The only answer to the plaintiff's case is a bare denial on the part of the defendant. The defendant has failed to discharge the evidential burden of proof necessary to rebut the plaintiff's case. The evidence establishing the fact that the TTB had been tampered with is incontrovertible. In the circumstances, the question must be answered in the affirmative.(Emphasis added.)

(f) Based on the above, I find that the plaintiff's meter at the defendant's premise had been tampered with and that the said tampered meter was unable to record the exact amount of electricity supplied to the defendant herein thus resulting in the monthly electricity bills issued by the plaintiff, not recording the actual electricity consumed by the defendant.

The plaintiff's issue (2)

[11] Whether the defendant is liable to the plaintiff for the loss of revenue suffered due to the alleged meter tampering pursuant to s 38(3) of the Electricity Supply Act 1990 ('the Act')?

[12] I noted that the plaintiff's claim herein is a civil claim for loss of revenue arising from the tampering of the plaintiff's meter at the defendant's premises, as the said tampered meter was unable to record the exact amount of electricity supplied to the defendant herein.

[13] I also find that the plaintiff has proved that the tampering of the plaintiff's meter at the defendant's premises had caused a discrepancy of -63.23%, in the reading of the plaintiff's meter of the electricity supplied to the defendant's premise that is the said meter was only able to read 36.77% of the actual electricity supplied to the defendant's premises.

[14] I find that exhs P8, P9, P10 and the testimony of PW3 lent strong support to the plaintiff's case:

Q: Sila terangkan kepada Mahkamah Yang Mulia ini, bagaimana En Hafez menyediakan laporan ini.

A: A: *Pertama sekali saya akan membuka akaun Defendan di dalam sistem E-CIBS TNB untuk mendapatkan semua data-data bil penggunaan bulanan yang digunakan oleh Defendan.* Dalam menyediakan laporan ini, saya hanya perlu data penggunaan dalam unit iaitu KWH (Kilo Watt Hour) dan tarikh bacaan meter setiap bulan.

Data-data ini saya akan downloadkan ke dalam format EXCEL yang mempunyai standard format. Bila data-data telah didownloadkan, saya akan tentukan bila terjadinya penurunan mendadak di dalam penggunan elektrik Defendan. Dalam kes ini, akaun Defendan menunjukkan penurunan mendadak bermula 18 Mei 2001. *Mengikut analisa saya, penggunaan elektrik pada bulan-bulan Januari hingga April 2001 menunjukkan penggunaan purata sebanyak 65000 KWH. Sedangkan, purata penggunaan elektrik pada bulan-bulan Mei 2001 hingga 10 Oktober 2005 (tarikh pemeriksaan TNB) menunjukkan purata penggunaan sebanyak 22000 KWH. Oleh itu, saya telah mengambil tarikh mula pengiraan saya bermula 18 Mei 2001.*

Setelah menentukan tarikh mula ini, saya akan menentukan beza jumlah yang telah dibilkan dan jumlah bil sebenar. Perbezaan di dalam jumlah yang telah dibilkan dan jumlah bil sebenar adalah disebabkan oleh ralat -63.23% yang ditemui oleh pasukan pemeriksaan TNB. Perbezaan ini akan menunjukkan jumlah tertunggak yang masih terhutang oleh Defendan kepada TNB untuk jumlah bekalan elektrik yang telah dibekalkan kepada premis Defendan tersebut.

Menurut pengiraan saya, jumlah perbezaan di antara jumlah yang telah dibilkan dan jumlah bil sebenar adalah sebanyak RM539,210.06. Apabila ditambah dengan kos operasi pemeriksaan TNB, jumlah tertunggak yang masih terhutang oleh Defendan kepada TNB adalah RM541,255.42

[15] I find, inter alia, that the defendant has not challenged the plaintiff's right to claim for the loss of revenue suffered by it under ss 38(3) to (5) of the Act and that the defendant has failed and/or are unable to show that there was a mala fide error in all the above evidence adduced by the plaintiff. I accept that the plaintiff's exhs P11 and P12 are prima facie evidence of the payment for loss of revenue due and owing by the defendant to the plaintiff, pursuant s 38(4) of the Act and that the purported defence raised against the claim are without basis.

[16] I am again guided by the following said cases:

(a) *Chin Hong Trading & Packaging Sdn Bhd v Tenaga Nasional Bhd* [2011] MLJU 979, where the court held:

In the light of the above findings, *is the defendant entitled to recover the loss of revenue of RM270.299.48 from the plaintiff.* The plaintiff did not agree with the defendant's back billing contending that it was arbitrary and without any basis. *Learned counsel for the plaintiff submitted that the defendant failed to prove the exactness of the amount claimed; adding that the defendant had the burden of proof to show not only a legal basis but a scientific or technical basis to explain how the defendant arrived at such a figure.*

DW3 was in charge of supervising the accounts of customers, approving and verifying the computation of loss or revenue in cases of tampering. DW3 explained that the final figure was based on the plaintiff's average daily consumption of electricity of 1667.26 kWh. This daily average figure was derived from the daily readings for the period from 1.10.2010 to 1.11.2010. DW3 also referred to a graph (exh D7) showing the monthly consumption trend at the plaintiff's factory for the period from 1998 until October 2010. Under cross-examination, DW3 explained that he calculated the loss of revenue for the period from October 2007 to October 2010. DW3 took October 2001 as the starting point because there was a sharp drop in the consumption in the month of October 2007 onwards. DW3's evidence was consistent and unshaken under cross-examination.

The defendant's claim for loss of revenue is made under s 38(3) of the Act. It provides that in the event of any tampering, the defendant shall be entitled to require the plaintiff to pay for the loss of revenue and any expenses incurred by

A the defendant. *Pursuant to subsection (4), the statement (exh D7) produced by DW3 shall be prima facie evidence of the payment that has to be made by the plaintiff. Such amount due shall be recoverable by civil action in court pursuant to subsection (5). As the statement constitutes prima facie evidence of the payment due to the defendant, it falls upon the plaintiff to rebut this prima facie evidence.*

B *The plaintiff failed to produce any evidence to show that there was any manifest error on the face of the statement. On the contrary, DW3's proved to be a credible witness; his evidence was clear, concise and consistent throughout. Accordingly, the Court finds that the plaintiff has failed to rebut the statement produced by DW3 showing the amount of the loss of revenue which is recoverable from the plaintiff.* (Emphasis added.)

C

(b) *Taiwan Chief Precision Technology Sdn Bhd (formely known as Li Yo Electronics Sdn Bhd) v Tenaga Nasional Bhd* [2013] 4 MLJ 625, where the court said at p 630:

D

(2) Whether the defendant is entitled to recover the loss of revenue of RM294,297.89?

The defendant's claim for loss of revenue is made under s 38(3) of the Act. It provides that in the event of any tampering, the defendant shall be entitled to require the plaintiff to pay for the loss of revenue and any expenses incurred by the defendant. *Pursuant to sub-s (4), the statement (exh D5) produced by DW3 shall be prima facie evidence of the payment that has to be made by the plaintiff.* Such amount due shall be recoverable by civil action in court pursuant to sub-s (5). *As the statement constitutes prima facie evidence of the payment due to the defendant, it falls upon the plaintiff to rebut this prima facie evidence.*

E

F

DW3 has been with the defendant for 14 years. He was in charge of monitoring cases and computing the loss of revenue in cases of tampering. *DW3 explained that the back billing was based on the kWh billed, the actual kWh consumed, the kWh under billed, and the amount under billed in RM. DW3 also produced a graph (exh D6) showing the plaintiffs monthly kWh consumption from January 2006 to July 2010. DW3 explained that the loss of revenue was calculated for the 6 month period between February 2007 and July 2010. He calculated the loss from February 2007 onwards as there was a drop in the consumption of electricity. Under cross-examination, DW3 agreed that his computation was based on assumption as he did not know when the CTT was tampered with.* However, in re-examination DW3 said that the electricity consumption at the plaintiff's factory shot up from 22,000 kWh to 51,000 kWh, an increase of more than 50% after the CTT was rectified by DW2. In fact, the electricity bills for August and September 2010 (exh P4) produced by the plaintiff shows that the consumption had increased significantly compared to the period prior to 2 July 2010.

G

H

I

No evidence was produced to show that there was any manifest error on the face of the statement. The court is satisfied that the statement is a fair and reasonable estimate of the loss of revenue due to the tampering of the CTT. (Emphasis added.)

[17] I also find that that the plaintiff has also proved that the said tampering of the plaintiff's meter, caused the plaintiff to suffer from loss of revenue. PW1 in WSPW1 stated in Q & A 12 and 15 as follows:

Q: Di dalam pemeriksaan fizikal ini, adakah En Fakhruddin dan pasukan anda mendapati sebarang kejanggalan?

A: *Ya. Dari pemeriksaan fizikal kami ini, kami mendapati bahawa sil penutup panel meter telah diusik.*

…

…

Q: Bolehkah kamu jelaskan kepada Mahkamah Yang Mulia ini tujuan ujian-ujian di atas dan penemuan kamu dan pasukan kamu di dalam ujian-ujian tersebut?

A: Boleh.

…

…

Tujuan Ujian Kekutuban pula adalah untuk memastikan ceper meter adalah dalam keadaan baik. *Di dalam ujian ini, kami telah mendapati terdapat kejanggalan pada ceper meter pada Fasa Kuning.*

…

…

Selepas itu, *kami telah memeriksa wayar arus fasa kuning di mana, kami telah mendapati bahawa wayar arus S1 dan S2 fasa kuning telah diterbalikkan.*

Setelah mendapati wayar arus S1 dan S2 fasa kuning telah diterbalikkan, kami menjalankan ujian kejituan. Ujian ini adalah untuk menentukan samada arus yang dibekalkan adalah sama dengan arus yang dibaca oleh meter. Untuk ujian ini kami telah mengaplikasikan formula berikut:

$$\text{Ralat (\%)} = \frac{Tc - Tm}{Tm} \times 100$$

Dimana,

$$Tc = \frac{3600000}{V \times I \times pf \times K}$$

Selepas menentukan semua factor-faktor formula yang diperlukan, kami telah mendapati bahawa terdapat ralat sebanyak -63.23% di dalam pembacaan meter tersebut.

[18] PW1 further explained in WSPW1A as follows (see Q & A 3):

Q: Sila terangkan pengiraan ralat yang betui kepada Mahkamah yang Mulia ini.

A: Bagi pengiraan ralat, pertama sekali kita kena menentukan 'Time Calculated'('Tc'). Formula untuk mengira Tc adalah seperti berikut:

$$Tc = \frac{3600000}{V \times Ix \quad Pf \times K}$$

Untuk pengiraan Tc di atas, nilai 'V', 'T', 'Pf' dan 'K' dapat ditentukan dari maklumat di dalam Borang Pemeriksaan Meter bertarikh 10.10.2005. Dimana, nilai-nilai 'V', 'T', 'Pf' dan 'K' adalah:

V = Average Voltage = (244.7 + 245.6 +247.4)/3
= (737.6)/3
= 245.86 @ 246

I = Total Current = 2.34 + 2.41+2.08
= 6.83

Pf = Power factor = 1

C = Constant = 4 4/9 x 60
= 40/9x60
= 266.6667 @ 267

Oleh itu, $Tc = \frac{3600000}{V \times I \times Pf \times K}$

$= \frac{3600000}{246 \times 6.83 \times 1 \times 267}$

$= \frac{3600000}{448608.06}$

= 8.024 @ 8.02

Setelah mendapatkan Tc, ralat ditentukan menggunakan formula berikut:

Ralat(%) = Tc-Tm x100 / Tm

Dimana Tm adalah masa yang direkodkan = 21.82

Maka, peratus ralat = 8.02-21.82 x 100 / 21.82

= - 63.23 %"

(Emphasis added.)

[19] The defendant also contended that that pursuant to reg 11 of the Licensee Supply Regulations, the plaintiff's claim is limited to 'three months from the date the defendant was informed about being undercharged'. I am in agreement with the plaintiff's contention that this contention is a non-starter as the same was never put to the plaintiff's witnesses. In the case of *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal* [1995] 2 MLJ 770, the Court of Appeal held at pp 794 and 795 as follows:

> *It is essential that a party's case be expressly put to his opponent's material witnesses when they are under cross-examination. A failure in this respect may be treated as an abandonment of the pleaded case and if a party, in the absence of valid reasons, refrains from doing so, then he may be barred from raising it in argument.* It is quite wrong to think that this rule is confined to the trial of criminal causes. It applies with equal force in the trial of civil causes as well.
>
> This rule as to cross-examination to which I have just adverted derives its name from the case in which it was expressed. It is the decision of the House of Lords in *Browne v Dunn* (1893) 6 R 67 where Lord Herschell LC stated the principle in this way (at p 70):
>
> Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact, by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. *My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of*

making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses.

In the same case, Lord Halsbury had this to say (at p 76):

My Lords, with regard to the manner in which the evidence was given in this case, I cannot too heartily express my concurrence with the Lord Chancellor as to the mode in which a trial should be conducted. *To my mind nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to the accuracy of the facts they have deposed to.*(Emphasis added)

As such the defendant's failure to put this contention to the plaintiff's witnesses, amounted to an abandonment of the same. Thus the defendant is now estopped from relying on the same.

[20] In any event, I find that reg 11(2) has no application to the issue of meter tampering as reg 11(2) is based on the fact that the plaintiff's claim should be limited to three months from the date on which a consumer was notified of the meter tampering that is on 10 March 2011, by virtue of reg 11(2) of the Regulations which reads as follows:

11 (2) The reading of the consumer's meter shall be prima facie evidence of the amount of electricity consumed, provided that in the event a consumer has been undercharged or overcharged as a result of:

(a) meter inaccuracy;

(b) malfunctioning of the meter or its associated installation or part thereof;

(c) incorrect meter reading;

(d) incorrect application of a meter multiplying constant;

(e) cross-connection of installation to different accounts; or

(f) faulty installation,

the licensee shall make retrospective adjustments to the consumer's account in respect of consumption and demand for such period by taking into consideration the licensee's records, the consumer's consumption record and history, available technical evidence and other relevant circumstances to rectify such undercharged or overcharged situation:

Provided that the period for any retrospective adjustment *shall not exceed three months from the date the consumer has been informed about being undercharged or overcharged.* (Emphasis added.)

[21] Further the plaintiff's claim is for loss of revenue under s 38(3) of the Act, pursuant to ss 37(1), (3) and 37(14) of the Act and meter tampering is specifically referred to in s 37(1) of the Act whereas reg 11(2) makes no reference to meter tampering at all. I am guided by the case of *TNB v Wong Kwi Fong* (Civil Appeal No W-02–2901 of 2010) where the Court of Appeal held, inter alia, as follows:

> Regulation 11 (2) Licensee Supply Regulations 1990 is *not applicable* to a case of meter tampering ie an offence under s 37(3) Electricity Supply Act (ESA) and the claim for loss of revenue arising there from.(Emphasis added.)

[22] I find that the defendant is liable to the plaintiff in its claim for the loss of revenue under ss 38(3) to (5) of the Act as the defendant was at all material times, the registered consumer of the plaintiff. The plaintiff's E-CIBS System ('exh 1') showed that the defendant is the registered consumer and exh P24, the power supply agreement dated 4 September 1998 showed that the defendant is the 'consumer' of the electricity supplied to the defendant's premises. Further the monthly electricity bills for the electricity supplied to the defendant's premises ('exh 26') are issued in the defendant's name. Thus the defendant is therefore responsible for the same.

[23] In addition to the above, the following testimony of DW1 is also relevant:

DW1 in cross-examination:

DDM: *Dato', you confirmed that this account for this premises electricity supply account was applied by the defendant?*

SAW: *I confirm.*

DDM: You also confirmed that during this tenancy, you never terminated or the defendant never terminated this electricity supply.

SAW: *I am not in charge of the administrative matter. I am not sure whether I have cut out the supply of electricity for the factory.*

…

…

DDM: That's fine. You confirmed that this bill (at p 5, B) was issued to the defendant

SAW: Issued in the name of.

DDM: In the name of the defendant?

SAW: *My name. I never received the bill but they issued in the name of my company, My Lord.* But I have never received the bills at all.

DDM: No, that's not my question. *The question is, confirm that this bill was issued to or in the defendant's name.*

SAW: *Confirm, yes as appeared in this bill.*

DDM: *Confirm also that this bill was during the period of the tenancy.*

SAW: *Yes, I confirm.*

…

…

DDM: Ok can you confirm that Choon Meng executed this agreement on behalf of the defendant with the plaintiff?

SAW: *I confirm.*

…

…

DDM: Dato' I'll just refer you back to page 6 of the Bundle. Do you agree that its addressed to the defendant?

SAW: But not the address. The address is not the defendant's address, My Lord. Its the address of the tenant.

DDM: Dato', who own this address? Who own it?

SAW: *I, defendant own this factory.*

(Emphasis added.)

[24] Thus based on all the above, I find that the defendant is liable to the plaintiff in respect of its claim for loss of revenue due to the tampered meter at the defendant's premises.

[25] I find the defendant's contention, that at the material time, the defendant's premise was rented out to Kemboja Jaguh Sdn Bhd (refer to paras 5.3 to 5.8 of the defence) to be without merits, as the supply of electricity to the defendant's premises is based on the power supply agreement between the plaintiff and the defendant (see exh P24) which at all material times, was valid and subsisting. Further the plaintiff's system still shows the defendant as the registered consumer and the monthly electricity bills for the defendant's premises are still issued in the name of the defendant. There was no evidence that the defendant has requested or managed to get the said Kemboja Jaguh Sdn Bhd to apply for a new meter or account with the plaintiff. Further the premise is owned by the defendant and as such the defendant is duly liable.

[26] Further, the official company searches of both the defendant and Kemboja Jaguh Sdn Bhd (exhs 27 and 28), showed that both the defendant and the said Kemboja Jaguh Sdn Bhd shared the same registered address, directors and shareholders;

Relevant parts of DW1's testimony states:

DDM: Dato', are you a shareholder of Kemboja Jaguh?

SAW: Yes.

…

…

DDM: Dato' just confirm, is the shareholders of Kemboja Jaguh and Empayar Canggih the same?

SAW: Yes, they are the same by judging from these two searches, My Lord.

…

…

DDM: Dato', can I just ask you to confirm that the directors of Empayar Canggih are the same as the directors of Kemboja Jaguh?

SAW: Yes.

[27] Exhibit D23, the defendant's debit notes and Kemboja Jaguh Sdn Bhd's Payment Vouchers also showed that they both share the same address (ie No 152–3–2 to 153–2–5, Kompleks Maluri, Jalan Jejaka, Taman Maluri, 55100 Kuala Lumpur).

[28] In the light of the above, I am of the firm view that the defendant and Kemboja Jaguh Sdn Bhd are, for all intent and purposes, one and the same. I am guided by the approach of Lord Denning LJ in *H L Bolton (Engineering) Co Ltd v T J Graham & Sons Ltd* [1956] 3 All ER 624, where he said:

> A company may in many ways be likened to a human body. *They have a brain and a nerve centre which controls what they do.* They also have hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. *Others are directors and managers who represent the directing mind and will of the company, and control what they do. The state of mind of these managers is the state of mind of the company and is treated by the law as such.* So you will find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company. That is made clear in Lord Haldane's speech in *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705at pp 713 & 714. So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the directors or the managers will render the company themselves guilty. This is shown by *R v ICR Haulage Ltd* [1944] 1 All ER 691 to which we were referred this morning. (Emphasis added.)

THE CONSIDERATION OF THE DEFENDANT'S ISSUES

The defendant's issue (a)

[29] Whether the plaintiff's meter, located at the defendant's premises

known as 3103, Jalan BS 7/1, Blok F, Kawasan Perindustrian Bukit Serdang, Bukit Serdang, 43300 Seri Kembangan, Selangor Darul Ehsan, had been tampered with and whether the alleged tampering resulted in the plaintiff suffering loss of revenue?

This issue is similar to one of the plaintiff's issues which I have considered earlier.

The defendant's issue (b)

[30] Whether the plaintiff is required to prove that the defendant has committed an offence under s 37(1), (3) or (14) of the Electricity Supply Act 1990 before the plaintiff is entitled to claim from the defendant for loss of revenue incurred under s 38(3) of the Electricity Supply Act 1990 as a result of the alleged meter tampering? and

The defendant's issue (c)

[31] Whether the plaintiff is required to prove that the defendant has committed an offence under s 37(1), (3) or (14) of the Electricity Supply Act 1990 on a balance of probabilities or 'beyond reasonable doubt'?

[32] I shall deal with both issues together. I find that the plaintiff is not required to prove that the defendant has committed an offence under s 37(1), (3) or (14) of the Electricity Supply Act 1990 before the plaintiff is entitled to claim from the defendant for loss of revenue incurred under s 38(3) of the Electricity Supply Act 1990 as a result of the alleged meter tampering.

[33] In the Court of Appeal case of *Marwin Industries Sdn Bhd v Tenaga Nasional Berhad* (Civil Appeal No J-02 (NCvC)-3147–12 of 2011) the court held, inter, alia as follows (at para 2):

> Tenaga Nasional Berhad's claim is a *civil one* for loss of revenue and *made under s 38 (5) Electricity Supply Act 1990*. In our judgment, the *burden of proof in such a case is on a civil standard* ie on a *balance of probabilities*.
>
> (Emphasis added.)

The defendant's issue (d)

[34] Whether the defendant owed a duty of care to the plaintiff as the account holder and landlord of the premises to check the meter regularly and to detect any possible tampering by the actual consumer (*pelanggan sebenar*)?

[35] In the circumstances of the case, I find that the defendant owed a duty of care to the plaintiff as the account holder/ registered consumer of the plaintiff and landlord of the premises to check the meter regularly and to detect any possible tampering by the actual consumer (*pelanggan sebenar*) based on the grounds given above, in the course of considering the plaintiff's issues, failing which the defendant shall be liable for any tampering arising.

THE CREDIBILITY AND DEMEANOUR OF WITNESSES

[36] Having observed the demeanour and testimonies of the witnesses of both the plaintiff and the defendant whilst they were testifying, I find that I prefer the evidence of the plaintiff's to that the defendant's. I find that there were a number of material contradictions in the testimonies of DW1 and DW2, and as such, I attach minimal weight to their testimonies.

[37] In this connection, the following extracts of DW1's and DW2's testimonies are pertinent:

(a) Initially, DW1 claims that the relationship between the defendant and Kemboja Jaguh Sdn Bhd is only one of landlord and tenant.

> DDM: You have no knowledge of this October inspection?
>
> SAW: I have no knowledge, My Lord.
>
> DDM: Your tenant, Kemboja Jaguh never told you about this?
>
> SAW: Nobody told me about that.
>
> DDM: That's because, as you mentioned earlier you have no idea about Kemboja Jaguh's affairs at the premise. Is that right?
>
> SAW: I know he is doing his business there. As long as he pays my rental regularly, I did not pay attention to other matter.
>
> DDM: So following from that, so the only relationship between the defendant and the tenant, Kemboja Jaguh is a tenancy relationship.
>
> SAW: Only a relationship of a landlord and a tenant.

[38] However, taking into consideration the said exhs 27 and 28, I find it is clear that that the relationship between the defendant and Kemboja Jaguh Sdn Bhd is not purely, 'only a relationship of landlord and a tenant' and that the defendant cannot sought to evade liability for the tampered meter and loss of revenue arising thereof, by shifting the liability to a related private limited company under the guise of purported tenancy agreement. I entertained grave doubts as to whether there was indeed a tenancy agreement as contended by the

defendant as there was no credible evidence adduced, such as some form of documents to show the existence of a tenancy agreement and/or receipts of payment of rentals.

[39] I noted that initially DW1 in his testimony strongly sought to portray that the defendant and the tenant namely Kemboja Jaguh Sdn Bhd were totally unrelated parties and only when confronted with the relevant company searches, did he admit to the 'close' relationship.

[40] DW2 stated that he was a former supervisor of Kemboja Jaguh Sdn Bhd and he does not have any knowledge, personal or otherwise of the oral tenancy agreement between Kemboja Jaguh Sdn Bhd and the defendant or why Kemboja Jaguh Sdn Bhd failed to apply for its own electricity account:

DDM: Mr. Siew, do you know anything about the oral tenancy agreement between the defendant and Kemboja Jaguh Sdn Bhd?

SIEW: I am not aware.

DDM: Mr. Siew, Question 7, why didn't Kemboja Jaguh apply for its own electricity account?

SIEW: I also do not know why.

[41] Further DW2 has no knowledge of how Kemboja Jaguh Sdn Bhd makes payment of its rent to the defendant and DW2 also does not have knowledge of the plaintiff's inspection on 10 October 2005 as he was on leave and the defendant failed and/or omit to call any other witness to give evidence in respect of the plaintiff's inspection on 10 October 2005 and the oral tenancy agreement.

[42] I also find that both the defendant's witnesses had no personal knowledge of the material facts and documents in the present case that is existence of the oral tenancy agreement, payment of rental under the said tenancy agreement, the power supply agreement, the plaintiff's inspection on 10 October 2005 thus the defendant's case is devoid of credible evidence.

ORDER

[43] In the light of the above, I find that the plaintiff had proved its case against the defendant, on a balance of probabilities. In the premises, I therefore grant an order in terms of the plaintiff's statement of claim with costs.

Plaintiff's claim allowed with costs.

Reported by Kanesh Sundrum